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RUEHPB/AMEMBASSY PORT MORESBY 4022
RUEHUL/AMEMBASSY SEOUL 4958
RUEHKO/AMEMBASSY TOKYO 2550
RUEHWL/AMEMBASSY WELLINGTON 3124
RUEHHK/AMCONSUL HONG KONG 2997
RUEHBAD/AMCONSUL PERTH 1167
RHEFDIA/DIA WASHINGTON DC
RHMCSUU/FBI WASHINGTON DC
RUEAIIA/CIA WASHDC
RUEAWJA/DEPT OF JUSTICE WASHDC
RHHJJPI/USPACOM HONOLULU HI
RHEHNSC/NSC WASHDC

C O N F I D E N T I A L SECTION 01 OF 03 JAKARTA 001832

SIPDIS

DEPT FOR EAP, EAP/MTS, EAP/MLS, S/CT, INL FOR
BARCLAY/ROESS/BUHLER
DOJ FOR CRIM AAG SWARTZ, DOJ/OPDAT FOR
LEHMANN/ALEXANDRE/BERMAN
DOJ/CTS FOR MULLANEY, ST HILAIRE
FBI FOR ETTUI/SSA ROTH
NCTC WASHDC
NSC FOR E.PHU

E.O. 12958: DECL: 09/26/2018
TAGS: [PGOV](#) [PTER](#) [KJUS](#) [ID](#) [AS](#)
SUBJECT: BALI BOMBERS -- CONSTITUTIONAL COURT REVIEWS DEATH
PENALTY

REF: A. JAKARTA 1737
[1](#)B. JAKARTA 1611
[1](#)C. JAKARTA 1573

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Classified By: Pol/C Joseph L. Novak, reasons 1.4(b+d).

[1](#)1. (C) SUMMARY: The Bali bombers' last-ditch appeal to Indonesia's Constitutional Court has turned into a serious debate in court chambers on the death penalty and how it is carried out in Indonesia. The three convicted terrorists have claimed that execution by firing squad--the constitutionally mandated method of execution--is "torture." We have heard that the Court may be leaning to uphold the death penalty and the use of firing squads, but it is not clear when any ruling will be announced.

[1](#)2. (C) SUMMARY (Con'd): In the meantime, the GOI is getting set to announce its annual "remissions" of prisoner sentences as part of the Eid holiday. This announcement could potentially impact the sentences of some convicted terrorists, though one contact told us that the GOI was trying hard to minimize that possibility. END SUMMARY.

PROCEEDINGS FOCUS ON EXECUTION METHODS

[1](#)3. (C) Hearings continue into the Bali bombers' Constitutional Court appeal of the form of death penalty used in Indonesia. Prof. Dr. Moh Mahfud, the new Chief Justice (ref B), presided over a recent session. The case was brought to the Constitutional Court by the Bali bombers' lawyers (ref A) after the convicted terrorists had exhausted all legal forms of delay through the Supreme Court and the

Attorney General's Office (AGO). (Note: The three terrorists, Amrozi, one name only, Imam Samudra and Ali Gufron, are on death row, incarcerated on an island prison located off of Central Java. They were given death sentences for their roles in the October 2002 Bali bombing that killed 202 people.)

¶4. (C) The Bali bombers' attorneys have asked the Constitutional Court to review both the constitutionality of the method of execution and the constitutionality of the means by which the death penalty was made into law. In their petition to the court, the lawyers claimed that execution by firing squad was painful and constituted torture, which made this form of execution unconstitutional (since torture is banned in the Indonesian Constitution).

NO PAINLESS FORM OF EXECUTION

¶5. (C) During the September 18 hearing, the Constitutional Court heard testimony on death by firing squad, hanging, lethal injection and electrocution. According to Fritz Siregar, a Constitutional Court clerk, the testimony of the expert witnesses confirmed that every form of capital punishment causes "some pain" to the condemned. If the execution is done correctly, without regard to method, the pain is limited to a few seconds. If the execution is carried out poorly however, the prisoner could suffer significant pain.

¶6. (SBU) Father Charlie Burrows, a Catholic priest from Ireland who has lived in Indonesia for years, testified that when he witnessed the execution of two Nigerians approximately seven weeks earlier, there were multiple

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opportunities for the execution to be carried out poorly. The seven-person firing squad (only one gun has the bullet) stood 5 to 10 meters away from the prisoner, with a red dot placed on his heart to identify the target. Because the executions took place in the middle of the night, a spotlight was focused on the prisoners. Burrows--who is strongly against the death penalty--testified that because of these conditions, it could be difficult for the firing squad to accurately hit the heart.

¶7. (SBU) Dr. Sun Sunatrio, an anesthesiologist, testified that if any of the forms of capital punishment are not administered properly, the person executed would likely feel pain. He described how each form of capital punishment (firing squad, lethal injection, hanging, and electrocution) could be carried out poorly and described the degree of pain the prisoner could feel in each case.

¶8. (C) K.H. Mudzakir, an Islamic law expert, and Dr. Jose Rizal, a doctor who works for a Muslim organization in conflict areas, testified on the relationship between the death penalty and Sharia law. According to a Constitutional Court intern, Justices Siahaan, Mahfud, Asshiddiqie and Indrati were unconvinced that death by firing squad was against Sharia.

COURT LEANING TO UPHOLD DEATH PENALTY?

¶9. (C) This Constitutional Court intern (an AmCit) told poloff that declaring the method of execution unconstitutional or declaring the death penalty itself unconstitutional may be politically impossible for the court. He stated that if the panel were to declare that death by firing squad was unconstitutional, then it would open the door for all other methods, such as hanging, to be challenged as well. He believes that the Justices are under pressure to find the method constitutional so that the three terrorists can be executed sometime after Eid ul Fitri, which marks the end of the holy month of Ramadan. (Note: Eid takes place October 1-2 this year.)

ANNUAL REMISSIONS LIST

¶10. (SBU) In other terrorism-related news: Every year after Ramadan, the GOI announces the list of convicted criminals who will be granted mandated sentence remissions (ref C). The Australian government has sent a letter to the GOI thanking them for the 2007 implementation of regulations limiting remissions given to perpetrators of terrorist attacks. The letter also requested that the GOI consider delaying the announcement of the remissions until after the anniversaries of the first and second Bali Bombings on October 12 and October 1, respectively. The terrorists who were convicted for their involvement in the 2002 Bali bombings, the 2004 Australian Embassy Bombing and the 2005 Bali bombings appear eligible for remissions under the current system.

¶11. (C) Pol/C brought up this issue in a September 26 conversation with Albert Matondang, a key adviser in the Coordinating Ministry of Political, Social and Legal issues. Matondang underlined that the GOI was doing what it could to minimize the possibility that remissions are given to convicted terrorists. Per the Australian's recent letter, he noted that Indonesia understood it was a controversial

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matter. That said, laws had to be followed. Still, he felt the GOI had room in the remissions regulations to work with.

HUME